*** THE HON'BLE Ms. JUSTICE G. ROHINI**

+ WRIT PETITION NO.12055 OF 2007

%Dated 18-06-2007

D. Narayana Reddy … Petitioner

VERSUS

$ 1. The Joint Collector, Ananthapur,
Ananthapur District., and another.
… Respondents

! Counsel for Petitioner: Sri Kothapalli Rammohan Chowdary

^Counsel for Respondents: G.P. for Revenue

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? Cases referred

1. 2006 (4) ALT 276 (D.B.)

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.12055 OF 2007

DATED: 18-06-2007

Between :

D. Narayana Reddy … Petitioner

And

1. The Joint Collector, Ananthapur,
   Ananthapur District., and another.

… Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.12055 OF 2007

ORDER :

The writ petitioner is the authorized dealer of the fair price shop of Marutla-II Village, Kuderu Mandal, Ananthapur District. The 2nd respondent issued a show-cause notice-cum-suspension order dated 9-12-2003 calling upon the petitioner to show-cause as to why his authorization should not be cancelled on the allegation that he had misused 193 quintals of food for work and also suspending the authorization pending enquiry.

Though the petitioner submitted his explanation denying the allegations made in the show-cause notice, the same was not accepted and the authorization of the petitioner was cancelled vide proceedings of the 2nd respondent dated 15-10-2005.

It is to be noted that on the basis of the very same allegation of misappropriation of food for work rice, a complaint was lodged by the Mandal Revenue Officer, Kuderu before the Station House Officer, Kuderu Police Station. The same was registered as Cr.No.88 of 2002 under Section 409 of Indian Penal Code and on the basis of the charge-sheet filed the matter was tried as CC.No.353 of 2004 by the Court of the Special Judicial Magistrate of First Class, Ananthapur.

The said criminal case, after full-fledged trial, ended in acquittal by order dated 28-2-2006 holding that the prosecution had failed to establish the guilt of the accused beyond reasonable doubt. Thereafter, the petitioner made several representations, the latest being on 11-5-2007 requesting the respondent to restore his authorization in the light of his acquittal in the criminal proceedings.

Alleging that the respondents failed to consider his request, this writ petition is filed seeking a Mandamus that the inaction on the part of the 2nd respondent in reinstating the petitioner as fair price shop dealer as arbitrary and illegal and contrary to the provisions of Clause-5 (4) of A.P. State Public Distribution Control Order, 2001.

I have heard the learned Counsel for the petitioner as well as the learned Government Pleader for Civil Supplies appearing for the respondents and perused the material on record.

At the outset, it is to be noted that the law is well-settled that the disciplinary proceedings for suspension or cancellation of licence are entirely different from the criminal proceedings. Hence, the mere acquittal by a competent Court of law long after the cancellation of the licence does not entitle the petitioner to seek restoration of the same.

Admittedly, in the case on hand, the authorization of the petitioner was cancelled after conducting due enquiry as provided under the A.P. State Public Distribution System Control Order, 2001 (for short, 'PDS Control Order, 2001'). It is not in dispute that the petitioner allowed the said order of cancellation to become final.

However, the learned Counsel for the petitioner while placing reliance upon the proviso to Clause-5 (4) contended that the respondents ought to have reissued the authorization to the petitioner, having regard to his acquittal in C.C.No.353 of 2004 by the Court of the Special Judicial Magistrate of First Class, Ananthapur.

Clause-5(4) of the PDS Control Order, 2001 may be extracted hereunder :

"(5) Issue of authorization to fair price shops and

establishment :-

(1) … … …. …. ….. ….

(2) … … … …. …. ….

(3) … … … … … …

(4) The appointing authority may, at any time whether at the request of the authorized fair price shop or authorized establishment or suo motu after making such enquiry as may be deemed necessary and for reasons to be recorded in writing, add to, amend, vary, suspend or cancel the authorization issued or deemed to be issued to him under this clause.

Notwithstanding anything contained in sub-clause (3) and (4) above, where a fair price shop dealer has been convicted by a Court of law in respect of contravention of any order made under Section 3 of the Essential Commodities Act, 1955 (Central Act 10 of 1955) relating to any of the commodities mentioned in the schedule to this order, the appointing authority, shall, by order in writing, cancel his authorization.

Provided that such conviction is set aside in any appeal or revision, the appointing authority may, on application in Form-I made by the person whose authorization has been cancelled, reissue the authorization to such person."

As could be seen, the second part of Clause-5 (4) specifically provides for cancellation of the authorization of the fair price shop dealer on his conviction by a Court of law in respect of contravention of any order made under Section 3 of the Essential Commodities Act, 1955. However, the proviso requires that in the event of such conviction being set aside in any Appeal or Revision the appointing authority on a request made by the dealer may re-issue the authorisation to the same dealer.

In the case on hand, admittedly the authorization of the petitioner was not cancelled on the ground of his conviction by a Court of law. An enquiry was conducted independently into the alleged misappropriation of 193 quintals of food for work rice in contravention of Clause-17 and Clause-22 (vii) of PDS Control Order, 2001 and after

giving an opportunity to the petitioner to explain the said allegations and on the basis of the findings recorded, the authorization was cancelled by the appointing authority. The said order squarely falls under the first part of Clause-5(4) of the PDS Control Order, 2001. Hence, the proviso which is applicable only to the second part of Clause-5(4) has no application at all and it is not open to the petitioner to claim restoration of his authorization.

May be that, the criminal proceedings initiated against the petitioner on the basis of the same allegations ended in acquittal subsequently, however, the same would not entitle the petitioner to seek a Mandamus compelling the respondents to restore the authorization.

The decision of the Division Bench in G. RAJABABU v. REVENUE DIVISIONAL OFFICER, PEDDAPURAM[1] relied upon by the learned Counsel for the petitioner is distinguishable on facts and does not support the contention raised by the petitioner that the impugned action of the respondents is contrary to the provisions of Clause-5(4) of the PDS Control Order, 2001.

Hence, the Writ Petition is hereby dismissed. No costs.

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G. ROHINI, J.

Dt. 18–06-2007
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Note:- LR copy to be marked.

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[1] 2006 (4) ALT 276 (D.B.)